

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 1384 of 2003

ORDER:

1) Assailing the order, dated 15.03.2002, passed in E.A.No.1 of 2002 in E.P.No.108 of 2001 in O.S.No.50 of 1998, on the file of the Senior Civil Judge, Khammam, wherein the application filed under Section 148 of C.P.C. to extend the time to deposit the balance sale consideration into the Court, was rejected, the present Civil Revision Petition is filed under Section 115 of C.P.C.

2) The facts in issue are as under:

The petitioner herein filed O.S.No.50 of 1998 for specific performance of contract, basing on an agreement of sale dated 03.04.1998 and consequently to direct the defendant to execute the sale deed and hand over possession of the suit schedule property after receiving the remaining sale consideration of Rs.1,25,000/-. In the said suit, the plaintiff examined herself as PW.1 and got marked Exs.A1 to A3. The defendant remained exparte. After considering the material available on record, the suit was decreed directing the defendant to execute the sale deed within a period of three months, after receiving the balance sale consideration

from the plaintiff. Since the defendant neither received the balance sale consideration nor executed the sale deed, the plaintiff filed E.P.No.108 of 2001 to enforce the decree. Since there was a delay in depositing the amount, the plaintiff filed the present E.A. seeking extension of time to deposit the balance sale consideration stating that she was under the impression that the balance sale consideration has to be deposited at the time of execution of the sale deed.

3) A counter came to be filed opposing the same. It is stated that there are no valid grounds to extend the time under Section 148 C.P.C. and as such prayed to dismiss the petition with costs.

4) After considering the rival submissions, the trial Court dismissed the said E.A. Challenging the same, the present Civil Revision Petition came to be filed.

5) Heard learned counsel for the petitioner. No representation on behalf of Smt. G.Jhansi, whose name is shown in the cause list as appearing for the respondent.

6) It is to be noted here that the suit was decreed in the year 1999, giving three months time to the defendant to execute the sale deed after receiving the balance sale consideration from the plaintiff. The same was interpreted to me that the plaintiff has to pay the amount within three

months and thereafter the defendant has to execute the sale deed. Since there was a delay in depositing the sale consideration, the E.A. which was filed to extend the time, was rejected.

7) But, a reading of the order would indicate that the defendant has to execute the sale deed within three months after receiving the balance sale consideration from the plaintiff. It is urged that the plaintiff was ready to pay the money right from the date of decree but the defendant intentionally refused to receive the same. The record discloses that the defendant remained *exparte* in the main suit. Therefore, the finding of the Court below that the plaintiff has not shown her readiness to perform her part of contract appears to be incorrect. In fact, instead of filing E.A. to extend the time, the plaintiff could have pressed the E.P. itself, since the order does not anywhere say that the amount has to be deposited in the Court within a period of three months. When the defendant failed to perform his part of contract on receiving the balance sale consideration, the plaintiff cannot be found fault with.

8) Having regard to the above, this Court is of the view that the order under challenge is set aside. The plaintiff is directed to deposit the balance sale consideration as per law

into the Court within a period of four (04) weeks from the date of receipt of a copy of the order and thereafter proceed in accordance with law.

9) Accordingly, the Civil Revision Petition is allowed. There shall be no order as to costs.

10) Miscellaneous petitions, if any, pending, shall stand closed.

07.09.2017
gkv



JUSTICE C. PRAVEEN KUMAR